

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT MICHAEL BANK,

Defendant-Appellant.

UNPUBLISHED

May 12, 2005

No. 252182

Tuscola Circuit Court

LC No. 03-008764-FH

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his convictions, following a jury trial, of one count of operating a motor vehicle under the influence of liquor (OUIL) causing death, MCL 257.625(4), and one count of leaving the scene of an accident resulting in death, MCL 257.617(3). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that there was insufficient evidence to prove his guilt beyond a reasonable doubt on the charge of OUIL causing death. His theory is that there was a lack of evidence showing that his intoxication was the cause of the victim's death. Rather, he argues that, given the lack of lighting and the darkness of the victim's clothing, the accident was an unavoidable one that he could not have prevented, not one caused by his intoxicated condition. Alternatively, he suggests that the accident may have been caused by his low blood sugar, not by his intoxication. We disagree on both points.

We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich 670, 680; 660 NW2d 322 (2002). When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

We will consider the various factual points defendant makes separately. First, as to lighting, it is true that it was midnight. The victim wore mostly dark clothing, although he was wearing a white hat and white shoes. However, his bicycle had amber and red reflectors, making it visible if approached from behind, which was the direction from which defendant approached. An eyewitness who came to the victim's assistance immediately after the accident had no trouble seeing the bicycle lying in the road and avoiding it. Thus the evidence, when viewed in a light most favorable to the prosecution, would have enabled the jury to have found beyond a reasonable doubt that it was defendant's intoxication, rather than the unavoidable inability to see the victim, that caused the accident.

As for defendant's low blood sugar, it is true that his blood sugar level was low after the accident. On cross-examination, the paramedic who diagnosed defendant's low blood sugar stated that the effects of low blood sugar on behavior are generally less severe than that of intoxication, although there are similarities between the effects of the two conditions. Regardless, when viewed in a light most favorable to the prosecution, the evidence supported a conclusion that defendant's intoxication caused the accident and not low blood sugar. Defendant was driving on the wrong side of the road at the time of the accident, and in fact, his vehicle was, according to one of the accident reconstruction experts, partly off the road, although the wheels were on the road surface. Defendant hardly hit his brakes, according to the reconstruction experts, before or after striking the victim. Defendant's blood-alcohol level when he was tested three hours after the accident was more than twice the legal limit. Considered in a light most favorable to the prosecution, this evidence is more than sufficient to establish beyond a reasonable doubt that defendant's intoxication caused the accident and the victim's death.

Defendant next argues that he could not be lawfully convicted of leaving the scene of a fatal accident because the statute is unconstitutional in that it can punish people for exercising their lawful right to self-preservation when it is necessary for them to leave accident scenes in order to receive urgent medical attention. Defendant relies on the overbreadth doctrine. Defendant did not preserve this issue by challenging the statute's constitutionality at trial. To avoid forfeiture of an unpreserved constitutional issue on appeal, defendant must show that (1) an error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected his substantial rights. *Carines, supra* at 763-764.

No plain error occurred. The doctrine of overbreadth allows a party to challenge a law written so broadly that it might inhibit the constitutionally protected speech of third parties. *In re Chmura*, 461 Mich 517, 530; 608 NW2d 31 (2000). The doctrine requires that there be a realistic danger that the challenged statute will significantly compromise recognized First Amendment protections. *Id.* at 531. Here, defendant's argument is not made in the context of any First Amendment protections. Moreover, a defendant can raise the affirmative defense of duress, which "excuses the defendant from criminal responsibility for an otherwise criminal act because the defendant was compelled to commit the act[.]"¹ *People v Luther*, 394 Mich 619, 622; 232 NW2d 184 (1975). Furthermore, defendant was not seriously injured in the accident. His brief stresses the amount of blood on his person and clothing after the accident, but

¹ The argument would be that a defendant was compelled to leave the scene of an accident in order to obtain emergency medical care.

testimony of eyewitnesses established that, except for a minor cut on his hand, this blood was the victim's, not defendant's. A paramedic who saw defendant after the accident reported that he did not have injuries that would have required his hospitalization, although he was taken to a hospital because his blood sugar was low. Most importantly of all, defendant did not leave the accident scene to seek medical assistance for himself. He did not go to a hospital or another place where medical help could have been rendered, but went home. Once home, he did not ask his father to seek medical help for him, but simply went back to his bedroom. The facts do not support defendant's claim. His challenge to the statute's constitutionality, and to its application to him, fails.

Affirmed.

/s/ William B. Murphy

/s/ Helene N. White

/s/ Michael R. Smolenski